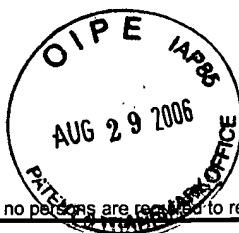


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PTO/SB/33 (07-05)

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AF**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

9400-212

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on 8/24/06Signature Joyce PaoliTyped or printed name Joyce Paoli

Application Number

10/028,153

Filed

12/20/2001

First Named Inventor

Paul T. Watson

Art Unit

2623

Examiner

Scott E. Beliveau

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 38,176
Registration number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34

Signature

Scott C. Hatfield

Typed or printed name

919 854 1400

Telephone number

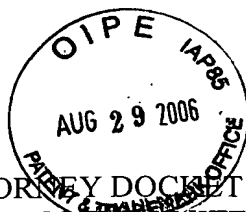
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ATTORNEY DOCKET NO. 9400-212

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Paul T. Watson, et al;

Confirmation No.: 3380

Application No.: 10/028,153

Group Art Unit: 2623

Filed: December 20, 2001

Examiner: Scott E. Beliveau

For: SYSTEM AND METHOD FOR CONTENT TRANSMISSION NETWORK
SELECTION

Date: August 24, 2006

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS'
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This document supports the Pre-Appeal Brief Request for Review that is filed concurrently herewith along with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG Notice of July 12, 2005. Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the rejections of Claims 1, which were finally rejected in the Final Office Action mailed June 28, 2006 ("Office Action").

It is not believed that an extension of time and/or additional fee(s), including fees for additional claims, are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to our Deposit Account No. 50-0220.

The Applicants appreciate the thorough examination of the present application as evidenced by the Office Action of June 28, 2006 (hereinafter "the Office Action"). In particular, the Applicants appreciate the Examiner's withdrawal of all rejections from the previous Office Actions. In response to the Final Office Action, the Applicants will show in the following remarks that all claims are patentable over the cited art. Accordingly, the Applicants submit that all claims are in condition for allowance as discussed in greater detail below, and a Notice Of Allowance is respectfully requested in due course.

For the sake of conciseness, the Applicants have not included all arguments presented in the Request For Reconsideration of March 2, 2006, and in the Appellant's

Brief of June 2, 2006. All arguments from the Request For Reconsideration and from the Appellant's Brief, however, are incorporated herein by reference.

Independent Claims 1, 16, And 19 Are Patentable

Independent Claims 1, 16, and 19 have been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 6,766,526 to Ellis (hereinafter "the '526 patent") in view of International PCT Patent Application No. WO 99/60790 to Ellis et al. (hereinafter "the '790 publication") and in further view of U.S. Patent No. 6,438,110 to Rai *et al.* (hereinafter "the Rai patent"). The Applicants respectfully submit, however, that independent Claims 1, 16, and 19 are patentable for at least the reasons discussed below.

Claim 1, for example, recites a method for content transmission network selection in a system coupled in parallel through both of a broadcast network and a broadband network to a viewer location wherein the broadcast network and the broadband network are different. More particularly, the method includes:

identifying video programming content to be transmitted to the viewer location based on a transmission request;

selecting one of the broadcast network or the broadband network for transmission of the video programming content to the viewer location based upon characteristics of the transmission request comprising a future time at which the video programming content is requested to be viewed, the selection based at least in part on an option of delivering the video programming content either at a time that the request is received or at the future time; and

transmitting the video programming content on the selected one of the broadcast network or the broadband network to the viewer location coupled to both of the broadcast and broadband networks. (Underline added.)

The Office Action concedes that the '526 patent "is silent with respect to particular features corresponding to the ordering of video programming to be subsequently delivered." The Office Action, page 5. The Applicants respectfully submit that the '790 publication and/or the Rai patent fail to provide the missing teachings.

The '790 publication, for example, fails to teach or suggest selecting one of a broadcast network or a broadband network for transmission wherein the selection is based at least in part on an option of delivering the video programming content either

at a time that the request is received or at the future time. Moreover, the Office Action concedes that:

It is unclear if the "selecting one of the broadcast network or a broadband network" necessarily takes time of transmission into account in association with its routing decisions so as to actively make a decision or choice between which network to route the data (Ellis et al. ('790): Col 11, lines 7-19).

Office Action, page 6. More particularly, the '790 publication states that:

If a selected video-on-demand program is not to start immediately, it may be fully or partially downloaded into local memory ... to lessen the bandwidth required to transmit the program and/or may be transmitted during a non-peak time.

The '790 publication, page 24. The combination of the '526 patent and '790 publication thus fails to teach or suggest selecting one of a broadcast network or a broadband network for transmission of video programming content, much less selecting one of a broadcast network or a broadband network based at least in part on an option of delivering the programming content either at a time that the request is received or at a future time.

Rai also fails to provide the missing teachings. In particular, Rai discusses a method of:

allocating reservations for network connections in advance in an attempt to ensure that the amount of traffic on a particular route of links between source and destination nodes will not exceed a maximum bitrate capacity of each link in that route at any time during the connection. (Underline added.)

Rai, col. 6, lines 36-40. Nothing in Rai, however, teaches or suggests selection of one of a broadcast network or a broadband network based at least in part on an option of delivering the programming content either at a time that the request is received or at a future time. In contrast, Rai relates to "allocating reservations for network connections in advance." The Applicants thus submit that Claim 1 is patentable over the combination of the '526 patent, the '790 publication, and the Rai patent, because none of these references, taken alone or in combination, teaches or suggests selection of one of a broadcast network or a broadband network based at least in part on an option of delivering the programming content either at a time that the request is received or at a future time.

The Applicants further submit that it would not be obvious to combine the Rai patent with the Ellis references (i.e., the '526 patent and the '790 publication) as suggested by the Office Action. With respect to the Rai patent, the Office Action states that:

In an analogous art pertaining to systems and methods for content transmission, the Rai et al. reference discloses actively making routing decisions or "selecting one of [a] broadcast network or [a] broadband network for transmission" based upon the schedule time for a requested transmission (Rai et al.: Figures 2-3; Col 5, Lines 48-61; Col 6, Line 30 – Col 7, Line 6; Col 7, Line 35 – Col 8, Line 11).

Office Action, page 6. The Applicants respectfully disagree.

In particular, the Ellis '526 patent discusses television systems (the '529 patent, col. 3, line 11, and col. 10, line 13) with communications paths such as satellite links, telephone network links, cable or fiber optic links, microwave links, Internet links, or combinations of such paths (the '529 patent, col. 3, lines 23-28), and the Ellis '790 publication discusses a television program guide system. In contrast, Rai states that:

The communications network 11 may comprise a computer network, for example a plurality of personal computers, workstations or the like at the node elements 12 connected by a local area network, comprising a link element. The link elements may comprise a wide area network, broadband network, e.g. ATM or SDH or the like. ...

Rai, col. 5, lines 44-49. The Applicants respectfully submit that it would not be obvious to somehow selectively combine aspects of the computer network of Rai with the television systems of the Ellis references to somehow teach or suggest the method of Claim 1.

In further support of the rejection of Claim 1, the "Response To Arguments" section of the Office Action states that:

the Ellis ('526) clearly discloses ... that the end user terminal may be a computer (Col 4, Lines 3-13). Therefore, the network would clearly be recognizable as a type of 'computer network'. Furthermore, the Rai et al. reference provides no express teaching or suggestion which would limit its teachings to a particular type or composition of network, but rather explicitly states that the network will comprise a variety of types of equipment and that it is an object of the invention to allocate and schedule resources across a communications network (Col 1, Line 66 – Col 2; Col 3, Lines 52-60). Why wouldn't the Ellis network benefit from a method for allocating resources efficiently? The instant application is analogously in the same filed of

endeavor and the combined Ellis et al. references are clearly utilize a form of communication network.

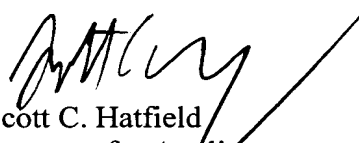
Office Action, page 3. As noted above, Rai discusses "allocating reservations for network connections in advance...." Accordingly, Rai teaches away from a "selection based ... on an option of delivering ... either at a time that the request is received or at the future time" as recited in Claim 1.

For at least the reasons discussed above, the Applicants respectfully submit that Claim 1 is separately patentable over the combination of the '526 patent, the '790 publication, and Rai. The Applicants further submit that independent Claims 16 and 19 are patentable for reasons similar to those discussed above with regard to Claim 1. In addition, dependent Claims 2-15, 17-18, and 20-30 are patentable at least as per the patentability of Claims 25, 27, and 29 from which they depend.

CONCLUSION

Accordingly, the Applicants submit that all pending claims in the present application are in condition for allowance, and allowance of all claims is respectfully requested in due course. The Examiner is encouraged to contact the undersigned attorney by telephone if any additional issues should need to be addressed.

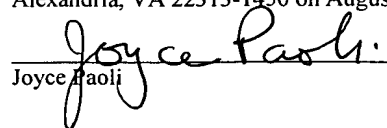
Respectfully submitted,


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Joyce Paoli